



U.S. COMMODITY FUTURES TRADING COMMISSION

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Re: Time-Limited No-Action Position for Bank Swap Dealers from certain Financial Reporting Requirements

Dear Ms. Brandon and Mr. Kennedy,

This is in response to your joint letter dated X to the Market Participants Division (“Division”) of the U.S. Commodity Futures Trading Commission (“Commission”). By your joint letter, you request, on behalf of your members that are registered swap dealers (“SDs”), confirmation from the Division that it will not recommend an enforcement action to the Commission if certain SDs subject to capital requirements of a prudential regulator¹ (“Bank SDs”) fail to comply with financial reporting requirements set forth in Commission regulation 23.105(p)(2) as discussed below.²

I. Regulatory Background

¹ The term “prudential regulator” is defined by section 1a(39) (7 U.S.C. 1a(39)) of the Commodity Exchange Act (“CEA”) (7 U.S.C. 1a *et. seq.*) to mean the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency.

² Commission regulations are found at 17 CFR Ch. I, and are available at the Commission’s website, www.CFTC.gov.

Section 4s(f) of the CEA authorizes the Commission to adopt rules imposing financial condition reporting requirements on Bank SDs and on SDs subject to the Commission's capital rules ("Non-Bank SDs").³ Pursuant to the Section 4s(f), the Commission adopted Regulation 23.105(p)(2),⁴ which requires each Bank SD to file unaudited quarterly financial information with the Commission within 30 calendar days of the end of the Bank SD's fiscal quarter. The required financial information for a Bank SD consists of a statement of financial condition ("Balance Sheet"), a statement of regulatory capital ("Statement of Regulatory Capital"), and a schedule of the Bank SD's aggregate positions in security-based swaps, mixed swaps, swaps, and other derivatives ("Schedule 1").⁵ The Bank SD is required to submit its Financial Reports on the specific forms set forth in Appendix C to Subpart E of Part 23 of the Commission's regulations ("Appendix C").⁶

The Balance Sheet and Statement of Regulatory Capital contained in Appendix C were intended to be identical to the Federal Financial Institutions Examination Council ("FFIEC") Form 031 ("Call Report") generally filed by banks, including certain Bank SDs, with their respective prudential regulator.⁷ In this regard, the Balance Sheet was designed to be identical with Schedule RC—Balance Sheet of the Call Report, and the Statement of Regulatory Capital was designed to be identical to Schedule RC-R—Regulatory Capital of the Call Report. The use of identical forms was intended to allow Bank SDs to file the same financial information with the Commission that they file with their applicable prudential regulators.

Schedule 1, however, was not based on a corresponding statement or schedule contained in the Call Report. Schedule 1 contains position information that the Commission requested to monitor the activities of Bank SDs in the derivatives markets. The Financial Reports were also identical to corresponding statements and schedule required by the Securities and Exchange Commission ("SEC") for security-based swap dealers that are subject to the capital requirements of a prudential regulator.⁸

II. Request for Relief

You request relief, on behalf of impacted Bank SDs, from the provisions of Regulation 23.105(p)(2). Specifically, you request relief to permit Bank SDs that file a Call Report with their applicable prudential regulator to submit a Schedule RC—Balance Sheet and a Schedule RC-R—Regulatory Capital from the Call Report with the Commission in lieu of the Balance Sheet and Statement of Regulatory Capital required by Regulation 23.105(p)(2) and Appendix C.

³ 7 U.S.C. 6s(f). Financial condition reporting for Non-Bank SDs are also set forth in Regulation 23.105. Financial condition reporting requirements for Non-Bank SDs are not the subject of this letter.

⁴ See Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020).

⁵ The Balance Sheet, Regulatory Capital Statement, and Schedule 1 are collectively referred to in this letter as a Bank SD's "Financial Reports."

⁶ The Division acknowledges an error in Regulation 23.105(p)(2) that provides that a Bank SD is required to file the information contained in Appendix B to Subpart E of Part 23 with the Commission within 30 calendar days of the end of each quarter. The reference should be to Appendix C to Subpart E of Part 23 of the Commission's regulations.

⁷ See, 85 FR 57462, 57516-57517.

⁸ See SEC Rule 18a-7 (17 CFR 240.18a-7(a)(2)) and Rule 249.617 (17 CFR 249.617).

In support of your request, you state that the FFIEC has revised the Call Report since the Commission adopted Appendix C. In this regard, you identify three line-items that have either been removed, added, or amended with additional language in the most recent Schedule RC or Schedule RC-R.⁹ As a result of these revisions, the Balance Sheet and Statement of Regulatory Capital contained in Appendix C are substantially comparable with the Schedule RC—Balance Sheet and Schedule RC-R—Regulatory Capital, but no longer identical.

You state that granting the requested relief would not materially impact the Commission's oversight of Bank SDs, as the relevant information in the revised Call Report is substantially comparable with the information that would otherwise be filed under Appendix C. You further state that if the relief is not provided, Bank SDs would have to prepare Balance Sheets and Statements of Regulatory Capital to comply with the Commission's requirements and separate statements in order to comply with the prudential regulators' requirements, which would increase costs to Bank SDs without enhancing the Commission's oversight. You also note that such an approach would be inconsistent with the Commission's original intent of harmonizing regulatory reporting with the prudential regulators' requirements.

You also request relief from the requirement in Regulation 23.105(p)(2) that requires a Bank SD to submit the Financial Reports contained in Appendix C to the Commission within 30 calendar days of the end of the Bank SD's fiscal quarter. In support of the request, you represent that certain prudential regulators permit banks, including certain Bank SDs, that operate non-U.S. branches to file their respective Call Report within 35 calendar days of the end of each quarter. You state that failing to provide such relief to Bank SDs would unnecessarily burden Bank SDs that have designed systems and procedures to report Call Report information with their applicable prudential regulator within 35 calendar days of the quarter end.

You further request relief to allow certain non-U.S. domiciled Bank SDs subject to home country capital standards in a G-20 jurisdiction or to capital standards that are consistent with the Capital Accord of the Basel Committee on Banking Supervision (a "Covered Non-U.S. Bank SD") to file financial information consisting of a balance sheet and a statement of capital prepared in accordance with its home country financial reporting requirements (either on a standalone basis or consolidated basis inclusive of the Bank SD's subsidiaries) and accounting standards in lieu of the applicable Balance Sheet and Statement of Regulatory Capital contained in Appendix C. You further request that such reports be filed with the Commission in the same frequency as required by the Covered Non-U.S. Bank SD's home country regulator.

In support of the request, you state that Covered Non-U.S. Bank SDs are generally not required to file Call Reports or similar reports with their applicable U.S. prudential regulator for the entity as a whole. Specifically, a Covered Non-U.S. Bank SD that does not have a U.S. branch or agency (or other U.S.-banking operations) is not required to file a Call Report at all with the prudential regulators. A Covered Non-U.S. Bank SD that does have a U.S. branch or agency is required to file a Call Report for its U.S. branch or agency¹⁰ and would be required to file certain additional financial information annually for the top tier foreign banking organization

⁹ See Request letter page 3.

¹⁰ See FFIEC Form 002, available at https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC002_202106_f.pdf.

on a consolidated basis with the Federal Reserve Board, such as financial statements prepared in accordance with local accounting practices.¹¹

You state that requiring Covered Non-U.S. Bank SDs that do not file Call Reports to submit the Balance Sheet and Statement of Regulatory Capital contained in Appendix C would impose a substantial burden on such entities by requiring them to prepare financial statements in accordance with GAAP that are otherwise not required by a prudential regulator or home country regulator. You request that Covered Non-U.S. Bank SDs be permitted to file a statement of financial condition and statement of regulatory capital that are comparable to the Balance Sheet and Statement of Regulatory Capital contained in Appendix C, but prepared using the applicable local accounting requirements and submitted in a timeframe consistent with home country requirements.

Lastly, you request relief to allow a Bank SD that is dually-registered with the SEC as a security-based swap dealer and required to file a FOCUS Report Part IIC to file such reports with the Commission in lieu of the Balance Sheet and Statement of Regulatory Capital required by Regulation 23.105(p)(2) and Appendix C. In support of your request, you state that the FOCUS Report Part IIC includes, among other financial information, a balance sheet, statement of regulatory capital, and a schedule of aggregate positions in security-based swaps, mixed swaps, swaps, and other derivatives that are identical to the Balance Sheet, Statement of Regulatory Capital, and Schedule 1 set forth in Appendix C. You request relief to address the SEC's pending substituted compliance orders for certain Covered Non-U.S. Bank SDs that may permit such firms to file financial information comparable to the FOCUS Part IIC with the SEC in lieu of the FOCUS Part IIC.

III. Division No-Action Position

The Commission finalized limited financial reporting requirements for Bank SDs in recognition that prudential regulators have an obligation to impose capital requirements on Bank SDs and have primary responsibility under the CEA to monitor Bank SD capital.¹² The limited financial reporting required by Regulation 23.105(p)(2) is intended to provide the Commission with information necessary to monitor the overall financial condition of Bank SDs at a high level due to their status as dealers in the swaps market and as counterparties to market participants, including Non-Bank SDs. The Division believes that providing the relief requested, subject to the conditions below, on a time-limited basis would not adversely impact its ability to monitor the capital position of Bank SDs.

Based on the facts and representations set forth in your letter and those summarized above, the Division will not recommend that the Commission take an enforcement action against a Bank SD for failure to comply with certain financial reporting requirements of Regulation 23.105(p)(2) if:

1. A Bank SD that files a Call Report with its applicable U.S. prudential regulator files the Schedule RC—Balance Sheet and the Schedule RC-R—Regulatory

¹¹ See FR Y-7, available at https://www.federalreserve.gov/reportforms/forms/FR_Y-720191231_f.pdf.

¹² See 7 U.S.C. 6s(e)(2)(i).

Capital from the Call Report, and Schedule 1 from Appendix C, with the Commission on a quarterly basis in lieu of the Balance Sheet and Statement of Regulatory Capital required under Appendix C, provided that the Bank SD files the above schedules with the Commission within the timeframe permitted by its applicable prudential regulator to file its Call Report.

2. A Covered Non-U.S. Bank SD that does not file a Call Report with a U.S. prudential regulator files a statement of financial condition and a statement of regulatory capital in lieu of the Balance Sheet and Statement of Regulatory Capital required under Appendix C, provided that the statements filed with the Commission: (i) contain comparable financial information to the information contained in the Balance Sheet and Statement of Regulatory Capital, and such statements are filed with the Covered Non-U.S. Bank SD's home country regulator; and (ii) include Schedule 1 of Appendix C with its balance sheet and statement of regulatory capital when filed with the Commission.
3. A Covered Non-U.S. Bank SD that prepares and presents the statement of financial condition, the statement of regulatory capital, and Schedule 1 in accordance with the accounting standards permitted by its applicable home country regulator, including the accounting principles established in its home jurisdiction, provided the statement of financial condition, statement of regulatory capital, and Schedule 1 are submitted to the Commission in the English language, with balances converted to U.S. dollars.
4. A Covered Non-U.S. Bank SD files the statement of financial condition, statement of regulatory capital, and Schedule 1 within 15 days of the earlier of the date such financial statements are filed with its home country regulator or the date such financial statements are required to be filed with its home country regulator. A Covered Non-U.S. Bank SD is required to file the financial statements and Schedule 1 with the Commission as of the end of each quarter, unless the Covered Non-U.S. Bank SD is only required to file such financial statements with its home country regulator on a semi-annual basis, in which case its financial statements and Schedule 1 must be filed with the Commission on a semi-annual basis.
5. A Covered Non-U.S. Bank SD that is dually-registered with the SEC as security-based swap dealer files a FOCUS Report Part IIC, or other SEC approved financial reports and schedules, with the Commission in lieu of its reporting obligation under Regulation 23.105(p)(2), provided that (i) the FOCUS Report Part IIC, or other SEC-approved financial reports and schedules, are filed with the Commission on the earlier of the due date for the reports under the SEC rules, or (ii) the date the reports were filed with the SEC. The FOCUS Report Part IIC or other SEC-approved financial reports and schedules must be filed with the Commission in the English language with balances converted to U.S. dollars.

The relief granted by this letter will expire the earlier of October 6, 2023 or the adoption of any revised financial reporting and notification requirements applicable to such SDs under Regulation 23.105(p).¹³

This letter, and the position taken herein, represent the views of Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. This letter and the no-action position taken herein are not binding on the Commission.¹⁴ The relief issued by this letter does no excuse persons relying on it from compliance with any other applicable requirements contained in the CEA or in Commission regulations. Further, this letter, and the positions taken herein, are based upon the facts and circumstances presented to Division staff. Any different, changed or omitted material facts or circumstances might render the relief provided by this letter void. Finally, as with all staff letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of relief provided herein, in its discretion.

If you have any questions concerning this correspondence, please feel free to contact Thomas Smith, Deputy Director, at 202-418-5495, Josh Beale, Associate Director at 202-418-5446, or Jennifer Bauer, Special Counsel at 202-418-5472.

Sincerely,

Amanda L. Olear
Acting Director

¹³ In addition, to assist SDs in submitting financial reports directly to the Commission the Division intends to issue forthcoming guidance which will, among other things, instruct SDs on the procedures for submitting financial forms directly to the Division.

¹⁴ See 17 CFR 140.99(a)(2) (“A no-action letter binds only the issuing Division... and not the Commission or other Commission staff.”).